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CINCPAC ALSO FOR POLAD

FROM USDEL 240

E.O. 11652: GDS

TAGS: MARR, RP

SUBJECT: PHILIPPINE BASE NEGOTIATIONS: ANALYSIS OF WORKING GROUP
ISSUES

1. SUMMARY. OUR U.S. WORKING GROUP TEAMS (FACILITIES,
COMMAND AND CONTROL, LEGAL, LABOR AND TAXATION) HAVE
CAREFULLY REVIEWED THE UNRESOLVED ISSUES WHICH CONTINUE
TO CONTRONT THEM IN AN EFFORT TO IDENTIFY WAYS IN WHICH
THOSE ISSUES MIGHT BE SATISFACTORILY RESOLVED. IT IS
RECOGNIZED IN ALL OF OUR WORKING GROUPS THAT PROGRESS IN
RESOLVING MOST OUTSTANDING ISSUES WILL DEPEND IN LARGE
MEASURE ON THE SATISFACTORY RESOLUTION OF THE MORE IMPORTANT
POLITICAL ISSUES. THE MOST SIGNIFICANT FACTORS BEARING
ON THE RESOLUTION OF THE POLITICAL ISSUES WILL BE
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1) THE NATURE OF OUR ANSWERS TO THE QUESTIONS POSED

IN THE PHILIPPINE AIDE MEMOIRE, (AND OUR RESPONSE TO GEN. ESPINO'S LETTER OF JULY 29, TO THE MDB) AND 2) THE AMOUNT AND TYPE OF ASSISTANCE WE AGREE TO PROVIDE FOR "DEFENSE SUPPORT". IT IS CLEAR THAT SIGNIFICANT FURTHER PROGRESS ON MOST ISSUES BEFORE THE WORKING GROUPS WILL DEPEND ON HOW MUCH SATISFACTION WE GIVE THE GOP ON THESE THREE CORE CONCERNS. PROVIDED BELOW ARE ANALYTICAL COMMENTS ON THE MORE IMPORTANT ISSUES WITHIN THE WORKING GROUPS. THE ISSUES ARE ARRANGED BY THE WORKING GROUP IN WHICH THEY HAVE BEEN PRIMARILY DISCUSSED. ALSO INCLUDED AT THE END OF THIS ASSESSMENT ARE BRIEF COMMENTS ON THE ISSUES WITHIN THE CHAIRMEN'S GROUP WHICH INCLUDE SOME OF THE MORE SENSITIVE ISSUES REQUIRING POLITICAL RESOLUTION.

FACILITIES

2. DEMARCATION OF FACILITIES. IT HAS BEEN A CONSTANT GOP POSITION 1) THAT ALL U.S. MILITARY FACILITIES OUTSIDE OF CLARK AND SUBIC BE RELINQUISHED AND 2) THAT THE U.S. MILITARY FACILITIES WITHIN THE CURRENT CLARK AND SUBIC RESERVATIONS BE REDUCED TO THE MINIMUM REQUIRED FOR ESSENTIAL U.S. OPERATIONS. THE GOP ALSO SEEKS "COSMETIC" BUFFERS ALONG THE MORE VISIBLE BOUNDARIES OF CLARK AND SUBIC. (WE SHOULD ASSESS WHETHER WE COULD ACCOMMODATE IN PRINCIPLE TO PHILIPPINE DESIRES FOR BUFFERS, A CONCESSION WHICH COULD HELP SECURE SOMETHING ELSEWHERE IN THE AGREEMENT OF MORE VALUE TO US.) WE SEE THE NEGOTIATING SITUATION AS FOLLOWS AT THE BASES AND OTHER FACILITIES WE CURRENTLY OPERATE IN THE PHILIPPINES.

A. CLARK AIR BASE. AFTER ENDLESS WEEKS OF PULLING AND TUGGING OVER REAL ESTATE ON THE CLARK RESERVATION, THE GOP IS TAKING RELINQUISHMENT OF ZONE D FAIRLY MUCH FOR GRANTED AND IS PRESSING US HARD TO GIVE UP AS WELL 1) THE CROW VALLEY BOMBING AND GUNNERY RANGE WHICH COMPRISES ZONE C, 2) THE NORTHWESTERN THIRD OF ZONE A (THAT PART OF THE WATERSHED WHICH FLOWS AWAY FROM CLARK AF), AND 3) THE SOUTHERN PART OF ZONE B WHICH TAKES IN THE CAPAS-TARLAC ROAD AND A MARGIN OF SUGAR LAND. APPRAISING THESE DEMANDS WITH AN UNEMOTIONAL EYE, WE BELIEVE THAT SOME OF THE AREAS THE GOP WANTS CAN

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BE GIVEN UP WITHOUT SIGNIFICANTLY HINDERING OUR OPERATIONS. ZONE D IS A FOREGONE CONCLUSION, ALTHOUGH WE SHOULD TRY TO RETAIN THE SMALL HILLOCK ON THE NORTHERN EDGE OF THE ZONE WHERE WE HAVE A SMALL RADAR SITE WHICH SUPPORTS THE CROW VALLEY RANGE. THE WATERSHED IN ZONE A WHICH IS IN QUESTION DOES FLOW AWAY FROM CLARK AND IS OF NO DIRECT VALUE TO THE BASE. IT COULD BE RELINQUISHED. THE PART OF ZONE B WHICH IS IN QUESTION

IS ALREADY UNDER CULTIVATION BY SQUATTERS AND WHILE ITS
FORMAL RELINQUISHMENT WOULD MEAN THAT ZONES B AND C
WOULD NO LONGER BE CONTIGUOUS, WE SEE NO MAJOR PRACTICAL
PROBLEMS IN RELINQUISHMENT OF THIS PORTION OF ZONE B.
ZONE C IS A DIFFERENT MATTER. WE MUST CONTINUE TO HAVE
PRIMARY CONTROL OVER THE BOMBING AND GUNNERY RANGE AND
WE HAVE STRESSED TO GOP THAT THE RANGE IS A KEY ELEMENT
IN OUR AIR READINESS. WE ARE REASONABLY CONFIDENT THAT
WE CAN RETAIN ZONE C, PARTICULARLY IF WE ACCOMMODATE
TO THE GOP IN ZONES A AND B. WE MIGHT FURTHER IMPROVE
OUR CHANCES FOR HOLDING ZONE C IF WE ALLOWED THE
PHILIPPINE AIR FORCE (PAF) A GREATER ROLE AT CROW VALLEY,
FOR EXAMPLE, BY STATIONING FULL TIME PAF RANGE SECURITY
(AND PERHAPS AIR CONTROL PERSONNEL) WHO WOULD SERVE
ALONGSIDE THE USAF PERSONNEL NOW THERE. IT MAY ALSO
SUBSEQUENTLY BE PROPOSED TO US THAT THE U.S. BEAR THE
ADDED COSTS WHICH WOULD BE INCURRED IN BUILDING A ROAD

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NORTH AND WEST OF ZONE C, RATHER THAN DIRECTLY THROUGH IT, AS THE GOP CURRENTLY PROPOSES.

B. SUBIC BAY NAVAL BASE. THE GOP SAYS IT WANTS THE ENTIRE SUBIC WATERSHED BUT MAY SETTLE FOR THAT PORTION DRAINED BY THE JAD-JAD RIVER WHICH FLOWS AWAY FROM THE BASE INTO OLONGAPO CITY. OUR PROSPECTS FOR ADEQUATELY CONTAINING PHILIPPINE APPETITES FOR THE MAIN WATERSHED WOULD BE ENHANCED IF 1) WE AGREED TO CONTINUE TO ASSEST IN THE REFORESTATION EFFORT IN THE JAD-JAD WATERSHED WHICH IS NOW ALMOST TOTALLY DENUDED AND 2) THE GOP WERE ALLOWED CAREFULLY CONTROLLED PARTICIPATION IN THE TIMBER MANAGEMENT ACTIVITIES WITHIN THE MAIN SUBIC WATERSHED. IT IS A MAJOR BONE OF CONTENTION WITH THE GOP THAT THE U.S. NAVY IS CURRENTLY THE SOLE BENEFICIARY OF TIMBER CULLED FROM THE WATERSHED. WE WOULD STAND TO GAIN A GREAT DEAL IN OUR EFFORT TO MAINTAIN CONTROL

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OVER THE WATERSHED IF WE WERE TO ALLOW THE GOP A CAREFULLY CONTROLLED SHARE OF THE CULLING OPERATION. (OUR PROSPECTS FOR THE SUBIC WATERSHED HAVE BEEN ENHANCED BY THE RECENT USAID PROJECT TO RENOVATE AND IMPROVE THE EFFICIENCY OF THE OLONGAPO CITY WATER SYSTEM). SOMETIMES MISSED OR GLOSSED OVER (IGNORED BY THE PHILS) IN WATERSHED DISCUSSIONS IS THE AMOUNT OF BLT TROOP TRAINING IN THE FOUR WATERSHED AREAS AND THE JEST AREA. THIS TRAINING IS VERY IMPORTANT, HAS NO ADVERSE EFFECT ON REFORESTATION OR THE WATERSHED AND SHOULD BE PROVIDED FOR NO MATTER WHAT THE FINAL WATERSHED ARRANGEMENTS. ACROSS SUBIC BAY, THE GOP WOULD LIKE TO TAKE OVER THE ZAMBALES TRAINING AREA, INCORPORATING IT INTO A PHILIPPINE NAVAL RESERVATION WHICH WOULD ALSO INCLUDE THE SOUTHWEST ZAMBALES, NAZASA-TABONES, DEER CREEK AND WILD HORSE CREEK TRAINING AREAS. THE GOP WOULD GIVE US OPERATIONAL USE SIMILAR TO WHAT WE NOW HAVE IN THESE LATTER AREAS. WE SHOULD BE PREPARED TO GIVE SUCH A PROPOSAL SERIOUS CONSIDERATION BUT SHOULD ALSO BE PREPARED TO INSIST THAT OUR OPERATING AUTHORITIES BE INCLUDED IN THE AGREEMENT AND BE LESS SUBJECT TO POLITICAL WHIM THAN IS NOW THE CASE. CONCERNING THE WATERS OF SUBIC BAY, THE GOP CONTINUES TO HOLD OUT AGAINST DESIGNATING FOR U.S. USE MORE BAY WATERS THAN THE INNER HARBOR IN THE NEAR VICINITY OF THE U.S. FACILITY, PROMISING THAT IT CAN MEET OUR BAY WATER REQUIREMENTS WITH OPERATIONAL GUARANTEES. THIS IS A MAJOR ISSUE WITH SOME IN THE GOP AND WE SHOULD CAREFULLY EXAMINE WHETHER THE CURRENT DESIGNATION OF BAY WATERS COULD BE REDUCED IF WE WERE PROVIDED SPECIFIC GUARANTEES IN THE AGREEMENT FOR UNHAMPERED ACCESS TO AND USE OF THE WATERS WE NEED FOR OPERATIONS, PASSAGE, MANEUVER, ANCHORAGE AND ACCESS TO LAND AND SEA TRAIN-

ING AREAS. IF WE WERE TO GIVE UP A SUBSTANTIATION
PORTION OF THE WATERS NOW DESIGNATED PART OF THE BASE,
THESE OPERATIONAL GUARANTEES SHOULD BE BROAD ENOUGH TO
ENCOMPASS MAINTENANCE OF NAVIGATION AIDS, CHANNEL AND
OTHER DREDGING (AND, PERHAPS IN THE BARGAIN, EASING
CURRENT NPW NOTIFICATION PROCEDURES). CONCERNING
GRANDE ISLAND, THE GOP CONTINUES TO INSIST THAT THIS FLEET
RECREATIONAL FACILITY BE RELINQUISHED. WE CLEARLY
SHOULD RETAIN GRANDE ISLAND. COOPERATION ON THE
WATERSHED AND ON THE ZAMBALES TRAINING AREA MIGHT WELL
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ENHANCE THE PROSPECTS FOR DOING SO.

C. OTHER FACILITIES. THE GOP INSISTS UPON U.S.
RELINQUISHMENT OF WALLACE AIR STATION, SAN MIGUEL NAVAL
COMMUNICATIONS STATION AND JOHN HAY AIR BASE. WE
COULD PROBABLY MAKE AN ARRANGEMENT ON WALLACE WITHOUT
SERIOUSLY IMPAIRING OUR OPERATIONAL REQUIREMENTS. WE
ARE REASONABLY CONFIDENT THAT WE COULD CONTINUE THE
DRONE OPERATION UNDER A CONTRACT ARRANGEMENT SIMILAR
TO THE ONE WE NOW HAVE WITH BRUNSWICK AND DEVELOP SUIT-
ABLE ARRANGEMENTS FOR THE CONTINUATION OF OTHER U.S.
FUNCTIONS AT WALLACE WHICH WE DEEM ESSENTIAL EVEN WITH
PHILIPPINE CONTROL OF THE FACILITY. MOREOVER, RELINQUISH-
ING WALLACE COULD PERHAPS IMPROVE OUR CHANCES FOR LONDING SAN
MIGUEL. OUR TECHNICAL AND OPERATIONAL ARGUMENTS FOR THE
PRESERVATION OF SAN MIGUEL WHERE IT IS HAVE BEGUN TO SINK
IN AND A COOPERATIVE APPROACH ON WALLACE COULD HELP
REMOVE SAN MIGUEL FROM JEOPARDY. JOHN HAY POSES COMPLI-
CATED AND DIFFICULT PROBLEMS. THERE DOES REMAIN AN
OUTSIDE CHANCE THAT A LICENSE ARRANGEMENT WITH THE
AFP OR SOME OTHER ELEMENT OF THE GOP COULD STAVE OFF
THE COMMERCIAL INTERESTS WHICH WOULD LIKE TO TAKE IT
OVER. DELICATE MANEUVERING WILL BE REQUIRED TO FIND
THE RIGHT ALLY IN THE AFP OR ELSEWHERE IN THE GOP.
THE OTHER FACILITIES IN WHICH U.S. PERSONNEL ARE INVOLVED
SUCH AS THE DEL MONTE SEISMIC RESEARCH STATION AND THE
SEVERAL AIR DEFENSE RADAR SITES ARE ALREADY PHILIPPINE
MILITARY BASES AND WE SHOULD HAVE NO DIFFICULTY CONTINU-
ING TO PERFORM OUR FUNCTIONS AT THOSE FACILITIES.

3. USE OF FACILITIES. THE KEY TO A SATISFACTORY RESOLUTION
OF THIS ISSUE WILL BE OUR RESPONSE TO THE PHILIPPINE
AIDE MEMOIRE AND OUR OVERALL ABILITY TO CONVINCE THE
GOP THAT THE MUTUAL DEFENSE TREATY IS OF VALUE, PARTICULARLY
IN AREAS OF CURRENT CONCERN SUCH AS THE REED BANK. IF
WE ARE ABLE TO MAKE AN ACCEPTABLE CASE WITH THE GOP
ON THESE BROAD ISSUES, WE SHOULD FIND THAT THE CURRENT
STICKING POINTS ON USE OF FACILITIES WILL BE SMOOTHED

OVER. THE PRIMARY PROBLEM AREAS HAVE BEEN THE GOP'S
INSISTENCE ON "PRIOR CONSULTATION AND AGREEMENT" FOR USE

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OF THE FACILITIES INVOLVING MILITARY COMBAT OPERATIONS
AND ITS INTEREST IN LIMITING SUCH OPERATIONS" TO
"DEFENSIVE PURPOSES ONLY". WE DO NOT EXPECT THE GOP
TO STICK VERY HARD ON 1) ITS CURRENT POSITION THAT
PHILIPPINE FORCES COULD OPERATE FROM U.S. FACILITIES
WITH JUST "PRIOR COORDINATION" AND 2) THE DEMAND THAT
THE AFP BE ALLOWED TO PARTICIPATE IN THE DEVELOPMENT OF
"MUTUALLY WORKED OUT PROGRAMS" WITHIN THE U.S. FACILITIES.
(OUR AGREEMENT TO KEEP THE PHILIPPINE BASE COMMANDER
INFORMED SHOULD SUFFICE HERE.)

4. OWNERSHIP OF BUILDINGS. WE HAVE BEEN AUTHORIZED
BUT HAVE NOT YET TABLED LANGUAGE WHICH WILL SATISFY
GOP CONCERNS. WE SHOULD HOLD OFF TABLING THIS LANGUAGE
UNTIL A MOMENT COMES WHEN WE MIGHT TRADE IT FOR SOME-
THING WE NEED.

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5. NATURAL RESOURCES. THIS IS NOT A MAJOR ISSUE AND ONE ON WHICH WE CAN PROBABLY EXPECT THE GOP TO YIELD WHEN LARGER ISSUES SUCH AS DEMARCATION OF THE FACILITIES HAVE BEEN RESOLVED.

COMMAND AND CONTROL

6. AGREED FORCE LEVELS. THE GOP CONTINUES TO PRESS FOR AN ANNUAL REVIEW AND JUSTIFICATION OF U.S. FORCE LEVELS, NOT ONLY PERSONNEL AND UNITS STATIONED AT THE FACILITIES BUT TO INCLUDE AS WELL PERSONNEL AND UNITS WHICH MIGHT VISIT THE FACILITIES. IT WOULD PROBABLY BE ACCURATE TO ASSUME THAT WHATEVER ANNUAL FIGURE WE MIGHT PROVIDE WOULD BE USED BY THE GOP IN DETERMINING THE ADEQUACY OF THE "DEFENSE SUPPORT WE ARE PROVIDING FOR THAT YEAR. IF WE STICK TO OUR GUNS ON THIS ISSUE, THE GOP SHOULD EVENTUALLY SETTLE FOR WHAT WE ARE WILLING TO PROVIDE, I.E. INFORMATION FURNISHED PERIODICALLY ON THE STRENGTH LEVELS AND UNITS OF U.S. FORCES STATIONED IN THE PHILIPPINES.

7. GOP TAKEOVER OF FACILITIES. THIS ISSUE TOUCHES ON THE BASIC ISSUE OF PHILIPPINE SOVEREIGNTY AND ITS RESOLUTION WILL DEPEND ON HIGHER LEVEL POLITICAL DECISION. A SATISFACTORY RESOLUTION OF THE ISSUES RELATING TO THE MUTUAL DEFENSE TREATY WILL BE KEY IF WE ARE TO ELIMINATE THIS DANGEROUS PROVISION.

8. NPW VISITS. THE GOP WILL LIKELY AGREE TO CONTINUE CURRENT PROCEDURES FOR NPW VISITS WHICH REQUIRE PRIOR NOTIFICATION RATHER THAN PRIOR APPROVAL. THE GOP WILL STICK TO ITS PRESENT DEMAND FOR PRIOR APPROVAL UNTIL THE MAJOR POLITICAL ISSUES, INCLUDING "DEFENSE SUPPORT", ARE SATISFACTORILY RESOLVED. GIVEN OUR NPW TRACK RECORD AND A SATISFACTORY "QUID" ARRANGEMENT, IT MIGHT BE POSSIBLE TO GET AWAY ENTIRELY FROM ANY ARRANGEMENTS DIFFERENT FROM THOSE PREVAILING FOR CONVENTIONALLY POWERED SHIPS.

9. CONTROL OF VESSEL MOVEMENTS IN SUBIC BAY. THIS ISSUE RELATES DIRECTLY TO THE ISSUE OF WHETHER OR NOT SUBIC BAY WATERS SHOULD BE DEMARCATED AS PART OF THE SUBIC FACILITY. THE AD REFERENDUM LANGUAGE OF PARA
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THREE OF U.S. DRAFT ARTICLE VI IS MEANINGLESS IF WATERS ARE NOT INCLUDED WITHIN THE SUBIC FACILITY. IN CONJUNCTION WITH THE VARIOUS OTHER CONSIDERATIONS REGARDING SUBIC, WE SHOULD ALSO CONSIDER ALTERNATIVES AS TO HOW MUCH LESS WATER WE COULD LIVE WITH IF WE WERE GIVEN SPECIFIC GUARANTEES IN THE AGREEMENT FOR ACCESS TO AND USE OF THE WATERS WE NEED (SEE PARA 2B ABOVE).

10. OTHER LESSER ISSUES. OTHER ISSUES CAPABLE OF RESOLUTION AT THE WORKING GROUP LEVEL IF THERE IS SIGNIFICANT PROGRESS IN POLITICAL AND OTHER ISSUES ARE AS FOLLOW:

A. ISSUANCE OF DIRECTIVES BY THE PHILIPPINE BASE COMMANDER;

B. SECURITY ROLE OF U.S. FORCES OUTSIDE THE FACILITIES AND OUTSIDE THE BASE.

LEGAL

11. CRIMINAL JURISDICTION. THE EXERCISE OF CRIMINAL JURISDICTION IS A SERIOUS POLITICAL ISSUE WHICH WILL LIKELY REQUIRE RESOLUTION AT HIGHER LEVEL. THE WORKING GROUP HAS CONTINUED TO GO THROUGH THE MOTIONS OF REFINING PROCEDURES FOR BILATERAL REVIEW OF OFFICIAL DUTY ASSERTIONS. PHIL RESERVATIONS ARE SUCH, HOWEVER, THAT THE MOST WHICH COULD BE ACHIEVED NOW WOULD BE A PROCEDURE WHICH WOULD BE RELEVANT IF THE LARGER POLITICAL ISSUES ARE RESOLVED. THOSE LARGER ISSUES ARE WHETHER IT WILL BE SPECIFIED THAT ANY TRIAL OF U.S. PERSONNEL WILL BE IN PHILIPPINE CIVILIAN COURTS AND WHETHER THE U.S. MAY ULTIMATELY EXERCISE JURISDICTION IN INTER SE AND OFFICIAL DUTY CASES WHEN AN AD HOC SOLUTION CANNOT BE REACHED. WE BELIEVE BOTH OF THESE ISSUES WILL REQUIRE PRESIDENT MARCOS' PERSONAL ATTENTION. THE U.S. REQUIREMENT THAT THE AGREEMENT MUST CONTAIN A PROVISION LIMITING TRIALS OF U.S. PERSONNEL TO CIVILIAN COURTS IS APPRECIATED AND UNDERSTOOD BY THE PHILIPPINE PANEL. PRESIDENT MARCOS IS A PRAGMATIC INDIVIDUAL AND ONCE HE FOCUSES ON THE POLITICAL ASPECT OF THIS ISSUE AND

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REALIZES THE UNDESIRABILITY OF MILITARY TRIBUNALS OF ONE MILITARY FORCE TRYING MEMBERS OF ANOTHER SOVEREIGN'S MILITARY FORCES, HE WILL PROBABLY ACQUIESCE TO THE U.S. POSITION AS LONG AS IT CAN BE FORMULATED IN AN UNOBTRUSIVE MANNER. THE ULTIMATE DETERMINATION OF JURISDICTION BY THE U.S. IS ANOTHER MATTER. THIS ISSUE IS HIGHLY EMOTIONAL AND THE PHILIPPINE GOVERNMENT HAS SEVERELY LIMITED ITS ABILITY TO NEGOTIATE ON THIS ISSUE BY ITS PUBLIC STATEMENTS CONCERNING JURISDICTION OVER U.S. PERSONNEL. THEREFORE, IT IS BELIEVED THAT THIS ISSUE MAY BE ONE OF THE LAST ONES TO FALL IN PLACE AND U.S. POSITION WILL ONLY BE ACCEPTED IF IT'S ONE OF THE FEW REMAINING ISSUES PREVENTING AN AGREEMENT. EVEN THEN IT IS DOUBTFUL THAT THE PHILIPPINE GOVERNMENT WILL AGREE TO INCLUDING THE U.S. POSITION IN THE AGREEMENT ITSELF, BUT WILL INSIST THAT IT BE COVERED BY AN EXCHANGE OF NOTES.

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12. OTHER LEGAL ISSUES. MOST OTHER ARTICLES IN THE LEGAL AREA, CLAIMS, ASYLUM AND IMMIGRATION, POSE NO PARTICULAR PROBLEMS. THESE ARTICLES CAN BE NEGOTIATED TO A FINITE CONCLUSION AT THE SUB-POLITICAL LEVEL PROVIDING WE RECEIVE REQUESTED APPROVALS FROM WASHINGTON WITHOUT SUGGESTIONS FOR THE INCLUSION OF UNREALISTIC LANGUAGE. THE ARTICLES IN PRESENT FORM ARE BRACKETLESS. THE PHIL REPS IN THE LEGAL WORKING GROUP ARE APPARENTLY NOT INTERESTED, FOR WHATEVER INTERNAL REASONS THEY

MAY HAVE, IN GENERATING A PAPER WHICH HIGHLIGHTS
LOGGERHEAD POSITIONS OVER RELATIVELY MINOR MATTERS.
AS A RESULT THEY HAVE BEEN WILLING TO WORK WITH US IN
ACHIEVING COMPROMISE. NO U.S. POSITION REGARDING THESE
MATTERS IS OF SUFFICIENT MOMENT TO BE RESERVED AS A
POTENTIAL TRADE OFF AT ANY FUTURE HIGH LEVEL NEGOTIATIONS.
IN ACTUAL PRACTICE THESE ARTICLES WILL HAVE LITTLE
EFFECT ON NORMAL MILITARY OPERATIONAL FUNCTIONS. SOME
BENEFIT TO OUR OPERATION WILL BE REALIZED THROUGH THE
RELAXED VISA PROVISION IN THE ADMISSION AND DEPARTURE
ARTICLE. THE ARTICLE ON APPLICATION OF PHILIPPINE LAW
SHOULD PROBABLY BE THE SUBJECT OF ADDITIONAL ANALYSIS
ONCE WE HAVE A BETTER IDEA OF WHAT WILL BE ACTUALLY
CONTAINED IN THE OTHER PROVISIONS OF THE AGREEMENT,
ESPECIALLY IN THE AREA OF TAXATION. SOME DANGER CAN
BE FORESEEN IN THIS ARTICLE BEING IMPLEMENTED BY THOSE
WHO MAY BE BENT ON IMPEDING OPERATIONS OR RAISING ADDI-
TIONAL REVENUES, OR BOTH.

TAXATION

13. EXEMPTIONS. THE TAXATION WORKING GROUP HAS MADE
LITTLE APPARENT PROGRESS. THE GOP WILL HOLD BACK
ON GRANTING EXECPTIONS ENJOYED BY U.S. FORCES EVERYWHERE
ELSE IN THE WORLD IN ORDER TO GAIN CONCESSIONS FROM US
ELSEWHERE IN THE AGREEMENT. THIS SHOULD BE A MANAGEABLE
ISSUE ALTHOUGH WE DO NOT KNOW YET WHICH CONCESSIONS THE
GOP WILL LOOK TO IN EXCHANGE FOR THE EXEMPTIONS. THE
COMPONENT PARTS OF THE TAXATION ISSUE ARE AS FOLLOWS:

A. EXEMPTION FOR IMPORTATION OF PERSONAL AND HOUSE-
HOLD EFFECTS. THE GOP HAS ACKNOWLEDGED THAT SOME DUTY
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FREE IMPORTATION PRIVILEGES WILL BE AUTHORIZED. THE
CURRENT GOP POSITION WOULD LIMIT THE PRIVILEGE TO MEMBERS
OF THE U.S. FORCES IMPORTING GOODS ON INITIAL ARRIVAL.
PROHIBITED WOULD BE DUTY FREE IMPORTATION OF MOTOR
VEHICLES, MORE THAN TWO EACH OF CERTAIN MAJOR APPLIANCES,
AND IMPORTATIONS THROUGH THE APO OR EXCHANGES. WE HAVE
BEEN PRIVATELY ASSURED THAT MAJOR CONCESSIONS WILL BE
MADE ONCE MORE IMPORTANT ASPECTS OF THE AGREEMENT FALL
INTO PLACE. WE WOULD EXPECT THE PRACTICE OF DUTY FREE
IMPORTATIONS TO CONTINUE MUCH AS IN THE PAST WITH LANGUAGE
SIMILAR TO THE SPANISH MODEL, BUT PERHAPS WITH A LIMITATION
ON DUTY FREE IMPORTATION OF MAJOR APPLIANCES, SUBJECT
TO APPROPRIATE EXCEPTIONS.

B. IMPORTATION AND INCOME TAX EXEMPTION FOR
CONTRACTORS. GOP IS CURRENTLY NEGATIVE ON EXEMPTIONS
FOR CONTRACTORS OTHER THAN THOSE UNDER LONG TERM CONTRACT

FOR THE MAINTENANCE OF MILITARY AIRCRAFT, VESSELS OR OTHER MILITARY EQUIPMENT FOR WHICH SAID CONTRACTS WERE AGREED UPON WHEN THE EQUIPMENT WAS ORIGINALLY PURCHASED. LACK OF EXEMPTION WOULD IN EFFECT BE A TAX ON U.S. PARTICIPATION IN MUTUAL DEFENSE, WHICH IS UN-ACCEPTABLE. DEFENSE SECRETARY ENRILE PRESENTED A HARD LINE ON THIS ISSUE EARLY IN THE NEGOTIATIONS, AND GOP HAS SINCE BEEN RELUCTANT TO BROADEN THE CATEGORY OF TAX EXEMPT CONTRACTORS.

C. STATEMENTS BY U.S. PERSONNEL CONCERNING PHILIPPINE SOURCE INCOME. THE GOP IS DEEPLY CONCERNED THAT AMERICAN BASE EMPLOYEES WILL EARN PHILIPPINE SOURCE INCOME AND NOT PAY PHILIPPINE INCOME TAX. IN POINT OF FACT, RELATIVELY FEW U.S. PERSONNEL ACTUALLY EARN ANY PHILIPPINE SOURCE INCOME. NEVERTHELESS, THE GOP WANTS U.S. ASSISTANCE IN IDENTIFYING THESE PERSONS. THE GOP FIRST WANTED ANNUAL INFORMATION TAX RETURNS, BUT

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HAS REDUCED ITS REQUIREMENT TO A DECLARATION OF PHILIPPINE SOURCE INCOME TO BE SUBMITTED JUST PRIOR TO FINAL DEPARTURE OF PERSONNEL. WE BELIEVE THAT WE COULD LIVE WITH A DEPARTURE DECLARATION, AND THAT IT WOULD BE COSMETICALLY VALUABLE AND A DEMONSTRATION OF U.S. GOOD FAITH.

D. EXEMPTIONS FOR IMPORTATIONS, SALES AND PROFITS AT THE POST EXCHANGES, COMMISSARIES, AND CONCESSIONS. THE GOP CONTINUES TO INSIST ON DUTIES ON THE IMPORTED GOODS AND INCOME TAXES OF THE PROFITS OF THESE U.S. OUTLETS. THE GOP RECOGNIZES THAT ADDED TAX COSTS WILL FALL ON THE U.S., BUT CONTEND THAT SUCH STEPS ARE NEEDED TO THWART BLACK MARKETTING AND TO MAXIMIZE LOCAL PROCUREMENT. WE HAVE MADE LITTLE PROGRESS BUT GOP REP TOLEDO HAS CONFIDED THAT GOP WILL EVENTUALLY GIVE WAY.
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E. TAX EXEMPTION FOR U.S. CIVILIAN EMPLOYEES AND THEIR DEPENDENTS EMPLOYED IN THE FACILITIES. THIS IS AN EXEMPTION WHICH MUST AND WILL BE GRANTED. ALTHOUGH THE DOUBLE TAXATION TREATY WILL PROVIDE THIS EXEMPTION, SPECIFIC COVERAGE IN THE FACILITIES AGREEMENT IS ESSENTIAL, SINCE THE TWO DOCUMENTS ARE NOT COTERMINOUS. THE DOUBLE TAXATION TREATY ADDRESSES SALARIES PAID FROM PUBLIC FUNDS AND THE PHIL TAX REP HAS SUGGESTED THAT NONAPPROPRIATED FUNDS MAY NOT BE PUBLIC. WHILE WE DISAGREE ENTIRELY, THE ATTEMPTED DISTINCTION IS YET ANOTHER REASON TO ENSURE THE EXEMPTION IS SPELLED OUT.

LABOR

14. THE BASE LABOR AGREEMENT (BLA). THE PRIMARY ISSUE IS WHETHER TO 1) SEEK TO PRESERVE THE BLA OF 1968, AMENDING IT TO BRING INTO GREATER CONFORMITY WITH PHILIPPINE LAW, OR 2) TO INCORPORATE THE ESSENTIAL PROVISIONS OF THE BLA AS AN ANNEX TO A LABOR ARTICLE IN THE NEW AGREEMENT. THE GOP IS MOVING TOWARD THE LATTER OPTION AND WE BELIEVE IT HAS MERIT AND SHOULD BE PURSUED. IN THIS REGARD, WE HAVE DRAFTED A PROPOSED LABOR ARTICLE AND ANNEX WHICH IS BEING PROVIDED SEPTEL. BY WAY OF GENERAL BACKGROUND TO THIS PRIMARY ISSUE, WE SEE FOLLOWING SUBSIDIARY ISSUES AS MOST IMPORTANT TO US IN LABLR AREA.

A. PREFERENTIAL EMPLOYMENT - RIGHT TO CONTINUE EMPLOYING U.S. CITIZENS FOR SPECIAL MANAGEMENT NEEDS.

B. CONTRACTING OUT - CONTINUING RIGHT TO CONTRACT
OUT WORK NOW PERFORMED BY U.S. FORCES FILIPINO EMPLOYEES.

C. WAGE AND COMPENSATION SETTING - RIGHT TO
CONTINUE SETTING WAGES AND COMPENSATION UNILATERALLY,
BASED ON ESTABLISHED PREVAILING PRACTICE CONCEPT AND
USG-DOD POLICY, WITHOUT SUBJECTION TO BILATERAL DISPUTE
DECISIONS PROCESS.

D. JOINT US-RP LABOR COMMITTEE - RETAINING BLA
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PROVISIONS WHICH WOULD 1) COVER DISPUTES OVER UNILATERAL
U.S. FORCES WAGE SETTING WITH JOINT COMMITTEE HAVING
CONSULTATION ROLE, NOT DECISION, AND 2) CONTINUING JOINT
COMMITTEE CONSULTATION COGNIZANCE OVER MATTERS PORTEND-
ING LABOR AND WORK DISRUPTIONS (FORM OF NO-STRIKE CLAUSE).

E. GOP MEDICARE PROGRAM - WHETHER TO CONTINUE TO
PROVIDE EQUIVALENT COVERAGE BY SEPARATELY PROCURED
MEDICAL INSURANCE POLICY, RATHER THAN MOVING TO THE
PHILIPPINE MEDICARE PROGRAM.
SATISFACTORY LABOR ARRANGEMENTS ARE ESSENTIAL TO
THE SMOOTH OPERATION OF OUR FACILITIES, ESPECIALLY THE
COMPLEX AND SOPHISTICATED SHIP REPAIR FACILITY AT SUBIC.
UNSATISFACTORY LABOR PROVISIONS COULD POSE A MAJOR
THREAT TO EFFECTIVE DAY-TO-DAY OPERATIONS OF THE
FACILITIES.

15. SENSITIVE ISSUES. THE OBVIOUSLY MORE DELICATE
POLITICAL ISSUES WERE RESERVED FOR THE ATTENTION OF
THE CHAIRMEN. SOME LIMITED PROGRESS WAS MADE IN
SHARPENING THE DEFINITION OF THESE ISSUES BUT THEIR
RESOLUTION WILL BE DEPENDENT UPON HIGHER LEVEL POLITICAL
DISCUSSIONS. IN THIS CATEGORY ARE:

A. RP/US COOPERATION (U.S. SUPPORT FOR THE
MODERNIZATION OF THE PHILIPPINE ARMED FORCES); IN ADDI-
TION TO THE GRANT AND CREDIT COMPONENT OF OUR SUPPORT,
WE SHOULD CAREFULLY CONSIDER WHETHER THE SERVICES WOULD
BE WILLING TO PROVIDE FOR TRAINING IN BASE MANAGEMENT
AND JOINT MANNING PROCEDURES IN ADDITION TO SOME STEPPING UP OF
SERVICE-TO-SERVICE TRAINING. THIS COULD BE VALUABLE "QUID" AS
WELL AS AN INVESTMENT FOR THE FUTURE.

B. CONVERSION OF BASES (U.S. SUPPORT FOR MAKING
RELINQUISHED AREAS OR FACILITIES ECONOMICALLY VIABLE).
WE MUST CONTINUE TO RESIST THIS OPEN-ENDED OBLIGATION.

C. INTERPRETATION (ANY DOUBTS IN PROVISIONS SHOULD

BE SETTLED IN FAVOR OF THE PHILIPPINES). THIS IS OBVIOUSLY
UNACCEPTABLE.

D. TERM OF AGREEMENT. WASHINGTON HAS PROVIDED US
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WITH COMPROMISE LANGUAGE WHICH WE HAVE NOT YET TABLED.

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ACTION EA-09

INFO OCT-01 ISO-00 NSCE-00 CIAE-00 PM-04 H-02 INR-07 L-03

NSAE-00 NSC-05 PA-01 PRS-01 SP-02 SS-15 USIA-06 OMB-01

TRSE-00 MMO-01 ACDA-07 SIL-01 LAB-04 EB-07 /077 W
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P 100730Z SEP 76
FM AMEMBASSY MANILA
TO SECSTATE WASHDC PRIORITY 87
INFO SECDEF WASHDC PRIORITY
JCS WASHDC PRIORITY
CINCPAC PRIORITY
CINCPACAF PRIORITY
CINCPACFLT PRIORITY
CINCPACREPPHIL SUBIC PRIORITY
CG 13TH AF CLARK PRIORITY

C O N F I D E N T I A L SECTION 6 OF 6 MANILA 13899

CINCPAC ALSO FOR POLAD

IT IS CLEAR THAT THESE ISSUES CAN ONLY BE RESOLVED AT
HIGHER POLITICAL LEVEL IN CLOSE ASSOCIATION WITH THE
ISSUES RAISED IN THE AIDE MEMOIRE AND GENERAL ESPINO'S
LETTER OF JULY 29TH.

16. LESSER ISSUES. OTHER ISSUES HANDLED BY THE CHAIR-

MEN'S GROUP WHICH ARE CAPABLE OF RESOLUTION AT THE CHAIRMEN'S LEVEL IF THERE ARE MUTUALLY SATISFACTORY UNDERSTANDINGS ON THE ESSENTIAL POLITICAL ISSUES ARE AS FOLLOWS:

A. CURRENCY. THIS IS A POTENTIAL SLEEPER, TOUCHING AS IT DOES ON THE SENSITIVE ISSUE OF SEVEREIGNTY. IF WE ARE ABLE TO MEET OTHER MORE PRESSING AND VISIBLE PHILIPPINE CONCERNS ABOUT SOVEREIGNTY, WE STAND A FAIR CHANCE OF DISPOSING OF THIS ADMINISTRATIVELY IMPOSSIBLE CURRENCY PROVISION BY PRESSING THE TAIWAN-CONFIDENTIAL

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TYPE ARTICLE WE HAVE ALREADY TABLED.

B. OTHER INSTALLATIONS. WE WILL NEED TO KEEP CONTINUING PRESSURE ON THE GOP TO SECURE THE NOTES WHICH WOULD BE SIGNED SIMULTANEOUSLY WITH THE FACILITIES AGREEMENT TO COVER THE STATUS OF VOICE OF AMERICA, THE STATE DEPARTMENT REGIONAL RELAY FACILITY AND THE MAERICAN CEMETERY. WE SHOULD BE ABLE TO GET WHAT WE NEED IN ALL OF THESE AREAS BUT PRODDING AND ARM TWISTING WILL BE REQUIRED TO EXTRACT THE NECESSARY NOTES FROM THE FLACID GOP BUREAUCRACY. WE MUST INSIST THAT THE AGREEMENT NOT BE SIGNED UNTIL WE HAVE THESE NOTES.

C. PILIPINO. WE OUGHT TO BE ABLE TO ACCEPT SOME PROVISIONS WHICH INCORPORATES A PILIPINO TRANSLATION. SULLIVAN

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